

1960

c 387 Summary Convictions Act

Ontario

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CHAPTER 387

The Summary Convictions Act

1. In this Act, "justice" means a justice of the peace, and ^{Interpre-} includes two or more justices sitting and acting together, a ^{tation} magistrate, and every other officer or functionary having for the purposes of any Act the authority of a justice or magistrate. R.S.O. 1950, c. 379, s. 1.

2. Subject to any special provision otherwise enacted with ^{Application} respect to such offence, act or matter, this Act applies to, ^{of Act}

(a) every case in which any person commits, or is suspected of having committed, any offence or act over which the Legislature has legislative authority and for which such person is liable, on summary conviction, to imprisonment, fine, penalty or other punishment;

(b) every case in which an information is laid before a justice in relation to any matter over which the Legislature has legislative authority and with respect to which the justice has authority by law to make an order for the payment of money or otherwise. R.S.O. 1950, c. 379, s. 2.

3. Except where inconsistent with this Act, Parts XIX ^{Application} and XXIV and sections 20, 21, 22, 446 (in so far as it relates ^{of Criminal} to a witness), 621, 623, 624, 625, 682, 683, 684 and 689 of the ^{Code} *Criminal Code* (Canada), as amended or re-enacted from time to time, apply *mutatis mutandis* to every case to which this ^{1953-54,} Act applies as if the provisions thereof were enacted in and ^{c. 51 (Can.)} formed part of this Act. 1955, c. 83, s. 1, *part*; 1956, c. 86, s. 1.

4. In proceedings under this Act the depositions need not ^{Depositions} be read over to or signed by the witness. 1955, c. 83, s. 1, *part*. ^{need not} ^{be signed}

5. Notwithstanding anything in *The Judicature Act*, a case ^{Stated} stated under Part XXIV of the *Criminal Code* (Canada) shall ^{cases} be heard and determined by a judge of the Supreme Court in ^{R.S.O. 1960,} chambers. 1955, c. 83, s. 1, *part*. ^{c. 197}

6.—(1) Except as provided in subsection 9, every summons ^{Service by} issued for a contravention of any of the provisions of any Act ^{mail or} of the Legislature or of any regulation or order made there- ^{personal} ^{service}

under or of any municipal or other by-law shall be served either by sending it by prepaid post to the person summoned as hereinafter provided or by personal service as hereinafter provided. R.S.O. 1950, c. 379, s. 4 (1).

Address

(2) Every summons sent by prepaid post shall be addressed,

- (a) where the person summoned is not a corporation, to his last or usual place of abode; and
- (b) where the person summoned is a corporation, to the chief place of business or office or a branch of the corporation; or
- (c) where the person summoned is the holder of a licence or permit issued from the Department of Transport, to the address registered with the Department. R.S.O. 1950, c. 379, s. 4 (2); 1959, c. 96, s. 1 (1).

Non-
appearance
of person
summoned

(3) Except as provided in subsection 6, a summons sent by prepaid post shall have endorsed upon its face in bold face type a notice that if the person summoned does not appear in person or by counsel or other representative at the time and place indicated in the summons, the summons will be served,

- (a) where the person summoned is not a corporation, by personal service or by leaving it at his place of abode, or, in the case of the holder of a licence or permit issued from the Department of Transport, at the address registered with the Department; and
- (b) where the person summoned is a corporation, by serving it upon the mayor, president or other head or the clerk, secretary or like officer of the corporation or the chief officer of a branch thereof, or by leaving it at the chief place of business or office or a branch of the corporation, or where it holds a licence or permit issued from the Department of Transport, at the address registered with the Department,

and that, in the event of a conviction, the person summoned may be required to pay the cost of such service. R.S.O. 1950, c. 379, s. 4 (3); 1959, c. 96, s. 1 (2, 3).

When
deemed not
service

(4) Except as provided in subsection 6, a summons sent by prepaid post shall be deemed not to have been served unless the person summoned appears in person or by his counsel or other representative at the time and place named in the summons. R.S.O. 1950, c. 379, s. 4 (4).

Time for
service for
offences
under
R.S.O. 1960,
c. 172

(5) Every summons issued for a contravention of any provision of *The Highway Traffic Act*, except subsections 1 and 2 of section 7, subsection 1 of section 9, subsections 2 and 3 of section 25, sections 32 and 49 and subsection 1 of section 143,

shall be served by sending it by prepaid post or by personal service within twenty-one days of the alleged contravention. R.S.O. 1950, c. 379, s. 4 (5); 1958, c. 104, s. 1; 1960, c. 115, s. 1.

(6) - Where a summons is issued for a contravention of any of the provisions of *The Highway Traffic Act*, *The Public Commercial Vehicles Act*, *The Public Vehicles Act* or *The Motor Vehicle Fuel Tax Act* against a person who resides outside Ontario, whether within or without Canada, the summons shall be deemed to have been duly served when it has been sent by prepaid post to the last or usual place of abode of the person summoned and every such summons shall have endorsed upon its face in bold face type a notice as follows: "Take notice that the within summons has been issued against you for the offence indicated therein and is served by post upon a non-resident of Ontario in accordance with *The Summary Convictions Act*. If you do not appear in person or by counsel or other representative to make your defence at the time and place indicated in the summons, the charge will be proceeded with in your absence." R.S.O. 1950, c. 379, s. 4 (6); 1959, c. 96, s. 1 (4).

Service outside Ontario
R.S.O. 1960,
cc. 172, 319,
337, 248

(7) Every summons not sent by prepaid post shall be served,

Personal service

- (a) where the person summoned is not a corporation, by personal service or by leaving it for the person summoned at his last or usual place of abode, with an inmate thereof apparently not under the age of sixteen years, or where he holds a licence or permit issued from the Department of Transport, at the address registered with the Department, with an inmate thereof apparently not under the age of sixteen years; or
- (b) where the person summoned is a corporation, by serving it upon the mayor, president or other head or the clerk, secretary or like officer of the corporation or the chief officer of a branch thereof, and if any of such persons cannot conveniently be met with, by leaving it at the chief place of business, or office or a branch of the corporation, with an employee of the corporation apparently not under the age of sixteen years, or where it holds a licence or permit issued from the Department of Transport, at the address registered with the Department, with an employee of the corporation apparently not under the age of sixteen years. R.S.O. 1950, c. 379, s. 4 (7); 1959, c. 96, s. 1 (5, 6).

Where
mailed
summons
deemed not
served

(8) Where a summons sent by prepaid post is deemed not to have been served, another summons shall be issued and served in the manner prescribed by subsection 7. R.S.O. 1950, c. 379, s. 4 (8).

Time for
service of
further sum-
mons for
offence under
R.S.O. 1960,
c. 172

(9) Where a summons issued under subsection 8 is for a contravention of any provision of *The Highway Traffic Act*, it shall be served within fifteen days of the date on which the person is required to appear by the original summons. R.S.O. 1950, c. 379, s. 4 (9); 1953, c. 101, s. 1 (2).

Extension of
time for
service

(10) The time for serving a summons under subsection 5 or 9 may be extended at any time by a magistrate on sufficient evidence being adduced that the person named in the summons could not be served within the prescribed time. R.S.O. 1950, c. 379, s. 4 (10).

Proof of
sending

(11) The sending of a summons by prepaid post may be proved by the affidavit of the person who posted the summons and the affidavit shall state,

- (a) the place, date and time of posting;
- (b) the name of the person and the address to which the summons was sent; and
- (c) that such address is,
 - (i) to the best of the knowledge and belief of the deponent, the last or usual place of abode of the person summoned, or
 - (ii) where the person summoned is a corporation, the chief place of business or office or a branch of the corporation, or
 - (iii) registered with the Department of Transport as being the address of the person summoned, according to information received from the Department,

and every such affidavit is *prima facie* evidence of the facts stated therein. R.S.O. 1950, c. 379, s. 4 (11); 1959, c. 96, s. 1 (7).

Traffic
ticket
authorized
1953-54,
c. 51 (Can.)

R.S.O. 1960,
c. 172

7.—(1) In lieu of the procedure set out in the *Criminal Code* (Canada) for laying an information and for issuing a summons, an information may be laid and a summons issued by means of a traffic ticket in accordance with this section for a contravention of any provision of *The Highway Traffic Act* or any regulations made thereunder or for a contravention of any municipal by-law regulating traffic.

(2) Every traffic ticket shall be in four parts as follows: Form of traffic ticket

1. Information.
2. Report of conviction.
3. Police record.
4. Summons.

(3) The Lieutenant Governor in Council may make regulations, Regulations

- (a) prescribing the form of the traffic ticket;
- (b) defining any word or expression used in the regulations;
- (c) authorizing the use on a traffic ticket of any word or expression to designate an offence under *The Highway Traffic Act* or any regulations made thereunder or any municipal by-law regulating traffic; R.S.O. 1960, c. 172
- (d) respecting any matter that he deems necessary to provide for the use of the traffic ticket.

(4) The use on a traffic ticket of any word or expression authorized by the regulations to designate an offence under *The Highway Traffic Act* or any regulations made thereunder or any municipal by-law is sufficient for all purposes to describe the offence designated by such word or expression. Sufficiency of abbreviations

(5) A police officer or other informant shall indicate the offence charged on the traffic ticket by placing a cross, thus "X", in the box to the left of the offence charged or if the offence charged does not appear on the traffic ticket he shall write the offence in the space provided therefor on the traffic ticket. Offence charged, procedure

(6) Upon completing a traffic ticket and affixing his signature thereto, the police officer shall deliver the traffic ticket summons to the person charged with an offence therein and delivery of the traffic ticket summons in accordance herewith shall be deemed to be personal service in compliance with subsection 7 of section 6. Delivery of summons

(7) Where a traffic ticket summons is not delivered by a police officer in accordance with subsection 6, a traffic ticket information may be used to lay an information before a justice, in which case the traffic ticket summons may be attached for information purposes only to the summons issued by the justice. Traffic complaint authorized where summons not delivered

Traffic
complaint
signed and
sworn

(8) Every traffic ticket information shall be,

- (a) signed by the informant and sworn to before a justice; and
- (b) deposited, together with the traffic ticket report of conviction, with the proper justice.

Complaint
need not
be sworn to
before
delivery of
summons

(9) The traffic ticket information need not be sworn to before the traffic ticket summons is delivered.

Report of
conviction

(10) Where a justice makes a conviction on a traffic ticket information, he shall complete the traffic ticket report of conviction and forward it to the Registrar of Motor Vehicles and it shall be deemed to be compliance with subsection 1 of section 152 of *The Highway Traffic Act*. 1957, c. 117, s. 1.

R.S.O. 1960,
c. 172

Effect of
giving time
for payment

8. Where a conviction or order of a justice adjudges that a fine, penalty or costs be paid, the conviction or order is not void nor is the right to collect any fine or costs or to enforce any penalty under any such conviction or order impaired because of time having been allowed for the payment of the sum or any part thereof, or because of payment having been received of part of the sum adjudged to be paid, or because of the justice having accepted security for the payment of the same or any part thereof. R.S.O. 1950, c. 379, s. 5.

Payment of
prosecutor's
costs

9.—(1) The justice may award and order, in and by the conviction or order, the defendant to pay to the prosecutor or complainant such costs as to the justice seem reasonable, such costs not being inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace.

Payment of
defendant's
costs

(2) Where the justice dismisses the information, he may by the order of dismissal award and order the prosecutor or informant to pay to the defendant such costs as to the justice seem reasonable, the same not being inconsistent with the fees established by law to be taken on proceedings had by and before justices of the peace.

Recovery
of costs

(3) The sums allowed for costs shall be stated in the conviction or order, and are recoverable in the same manner and under the same warrants as a penalty adjudged to be paid by the conviction or order, and such costs shall extend to and include costs and charges of the distress, of the commitment, and of conveying the defendant to prison, and it is not necessary to include them in the amount mentioned in the conviction or order, but the amount thereof in case of a warrant of commitment shall be mentioned on the warrant when it is delivered to the jailer, and in the case of a distress, the person by whom the same are payable is entitled on demand to a statement of the amount thereof.

(4) Where there is no penalty to be recovered or where the information is dismissed, the costs shall be specified in the order and are recoverable only by distress and sale of the goods and chattels of the party. Recovery of costs where no penalty

(5) The costs awarded by the justice to the prosecutor or informant or to the defendant, as the case may be, may include a counsel fee of such an amount as the justice deems reasonable but not more than \$10. R.S.O. 1950, c. 379, s. 6. Counsel fee

10.—(1) Where a person is convicted of an offence for which a minimum punishment is not provided and he has not been previously convicted of any offence, the justice may, if he thinks it expedient having regard to the age, character and antecedents of the offender and to the nature of the offence and to any extenuating circumstances, direct that he be released upon suspended sentence. Suspended sentence

(2) The offender so released may at any time within two years or such shorter period as the justice fixes be called upon to appear and receive sentence if in the meantime he fails to keep the peace and to be of good behaviour. Sentence after suspension

(3) The justice may, if he sees fit, require a bond with or without sureties for such appearance and keeping of the peace and good behaviour. R.S.O. 1950, c. 379, s. 7. Security from person convicted

11. Where a person is convicted of an offence and under the relevant Act the convicting justice has no option but must impose a term of imprisonment upon the offender, the justice may, notwithstanding that Act, impose a fine of not more than \$1,000 in lieu of such imprisonment. 1953, c. 101, s. 2. Fine in lieu of imprisonment

12. Where a conviction adjudges a pecuniary penalty or compensation to be paid by a corporation or an order requires the payment of a sum of money by a corporation, whether the law authorizing such conviction or order does or does not provide a mode of raising or levying the penalty, compensation or sum of money, or of enforcing the payment thereof, the justice by his conviction or order after adjudging payment of such penalty, compensation or sum of money, with or without costs, may order and adjudge that in default of payment thereof forthwith, or within a limited time, such penalty, compensation or sum of money and costs, if the conviction or order is made with costs, shall be levied by distress and sale of sufficient goods and chattels of the corporation, and for such purpose the justice may issue a warrant of distress commanding a peace officer forthwith to make sufficient distress of the goods and chattels of the corporation, and if within ten days after the making of the distress the penalty, compensation

Conviction or order involving payment of money by a corporation

or sum of money and costs, if the conviction or order is made with costs, together with the reasonable charges of taking and keeping the distress, are not paid, then to sell the goods and chattels and to pay the money arising from the sale to the justice, and if no such distress is found, to notify the justice of such fact. 1956, c. 86, s. 2.

Return of convictions

13. Every justice shall forthwith after making a conviction or order or an order of dismissal transmit to the clerk of the peace for the county or district the conviction or order or order of dismissal together with the information, depositions and other papers relating to the case and any recognizances in respect of which proceedings are required to be taken in the court of general sessions of the peace. R.S.O. 1950, c. 379, s. 8 (1).

Search warrant, when to be issued

14.—(1) Where a justice is satisfied by information upon oath (Form 1) that there is reasonable ground for believing that there is in any building, receptacle or place,

- (a) anything upon or in respect of which an offence against a statute of Ontario has been or is suspected to have been committed; or
- (b) anything which there is reasonable ground to believe will afford evidence as to the commission of any such offence,

he may at any time issue a warrant (Form 2) under his hand authorizing a constable or other person named therein to search such building, receptacle or place for any such thing, and to seize and carry it before the justice issuing the warrant or some other justice for the same territorial division to be by him dealt with according to law.

When to be executed

(2) Every search warrant shall be executed between sunrise and sunset, unless the justice by the warrant authorizes the constable or other person to execute it at night.

How things seized to be dealt with

(3) Where any such thing is seized and brought before a justice, he may detain it, taking reasonable care to preserve it until the conclusion of the investigation, and, if no one is convicted, the justice shall direct the thing to be restored to the person from whom it was taken unless he is authorized or required by law to dispose of it otherwise. R.S.O. 1950, c. 379, s. 9.

When officers in charge of police station may take bail

15.—(1) Where a person who is charged with an offence to which this Act applies is taken into custody either with or without the warrant of a justice and is brought into a police station at any time during the day or night, the police officer

in charge of the station, if he thinks the case a proper one, may take bail without fee from such person by recognizance conditioned for his appearance within two days before the magistrate or other justice at the time and place therein mentioned. R.S.O. 1950, c. 379, s. 10 (1); 1958, c. 104, s. 2.

(2) The recognizance shall be of equal obligation on the persons entering into it and the same proceedings may be taken for the estreating of it as if it had been taken before a justice. Effect of recognizance so taken

(3) The police officer shall enter in a book the name, residence and occupation of the person entering into the recognizance and of his surety or sureties, if any, with the condition of the recognizance and the sums acknowledged. Record of recognizance

(4) The police officer shall make a return to the magistrate or other justice present at the time when and place where the person charged is required to appear of all recognizances taken by him. R.S.O. 1950, c. 379, s. 10 (2-4). Return of recognizance to be made

16. In all proceedings to which this Act applies, it is not necessary for the judge or magistrate to affix his seal to any document, and no document is invalidated by reason of the lack of a seal even though it purports to be sealed. R.S.O. 1950, c. 379, s. 11. Affixing of seal not necessary

17.—(1) Unless it is otherwise provided in the Act under which a conviction takes place or an order is made by a justice for the payment of money or dismissing an information, any person who thinks himself aggrieved by any such conviction or order or order of dismissal, the prosecutor or informant as well as the defendant, may appeal to the county or district court of the county or district, as the case may be, in which the cause of the information arose. R.S.O. 1950, c. 379, s. 12 (1). Appeal from conviction or order

(2) Subsection 1 does not affect any right of appeal that is otherwise provided by law. 1959, c. 96, s. 2. Other rights of appeal not affected

(3) No such order or conviction and no order or conviction made on appeal therefrom shall be removed into the Supreme Court by a writ of *certiorari* or motion instead thereof if the defendant has appealed from such order or conviction to any court to which an appeal from such order or conviction is authorized by law. Certiorari or motion therefor not to be granted where defendant has appealed

(4) Where an appeal is taken to the judge of the county or district court, the judge may award reasonable costs to either party, including counsel fees and all necessary disbursements. R.S.O. 1950, c. 379, s. 12 (2, 3). Costs of appeal

Appeal to
Court of
Appeal

18. An appeal to the Court of Appeal as provided by this Act may be taken by the informant or by any party to the proceedings in the court from which the appeal lies. 1956, c. 86, s. 3.

Appeal to
Court of
Appeal

19.—(1) If the Attorney General for Canada or the Attorney General for Ontario certifies that, in his opinion, a judgment or decision of the Supreme Court or a judge thereof upon a stated case or upon an application to quash a conviction made under an Act of Ontario creating an offence punishable on summary conviction before a justice or to discharge a prisoner who is held in custody under such conviction, whether the conviction has been quashed or the prisoner discharged or the application refused, involves a question on the construction of *The British North America Act* (Imperial), and is of sufficient importance to justify an appeal, an appeal at the instance of either Attorney General or of any party who thinks himself aggrieved lies therefrom to the Court of Appeal. R.S.O. 1950, c. 379, s. 13 (1).

Imp. 30-31
V., c. 3

Enforcing
conviction
or order

(2) After the decision of the Court of Appeal, the justice from whom the appeal was had, or any other justice exercising the same jurisdiction, has authority to enforce the order of the court upon the appeal.

Costs

(3) The defendant shall in no event be ordered to pay any costs on an appeal brought by the Attorney General for Canada or by the Attorney General for Ontario under this section. R.S.O. 1950, c. 379, s. 13 (3, 4).

When
imprison-
ment to
commence

20. The term of imprisonment in pursuance of any sentence shall, unless otherwise directed in the sentence, commence on and from the day on which the prisoner is lodged in jail thereunder, but no time during which the convicted person is out on bail shall be reckoned as part of the term of imprisonment to which he is sentenced. R.S.O. 1950, c. 379, s. 14.

FORM 1

(Section 14 (1))

INFORMATION TO OBTAIN A SEARCH WARRANT

Province of Ontario,
County of

The information of A. B., of....., in the said County, taken the.....day of....., in the year....., before me, C. D., a Justice of the Peace for the County (or District, etc.) of..... who says that (*insert general description of things to be searched for and offence in respect of which search is made*), and that he has just and reasonable cause to suspect, and suspects, that the said goods and chattels, or some part of them, are contained in the (*dwelling-house, etc.*) of E. F., of....., in the said County (or District, etc.) (*here add the causes of suspicion, whatever they may be*). Wherefore (*he*) prays that a search warrant may be granted to him to search the (*dwelling-house, etc.*) of the said E. F., as aforesaid, for the said goods and chattels.

Sworn, etc.

C. D.,
J.P. for (Name of County or District).

R.S.O. 1950, c. 379, Form 1.

FORM 2

(Section 14 (1))

SEARCH WARRANT

Province of Ontario,
County of

To all or any of the constables and other peace officers in the said County of.....

Whereas it appears on the oath of A. B., of....., that there is reason to suspect that (*describe the things to be searched for and offence in respect of which search is made*) are contained in..... at..... This is, therefore, to authorize you to enter between the hours of (*as the Justice directs*) into the said premises, and to search for the said things and to bring them before me or some other justice of the peace.

Dated at....., in the said County of..... this.....day of....., in the year.....

C. D.
J.P. for (Name of County or District).

R.S.O. 1950, c. 379, Form 2.

